

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10**

HARRELL CONSTRUCTION GROUP, L.L.C.¹

Employer

and

Case 10-RC-15157

LABORER'S INTERNATIONAL UNION OF
LOCAL UNION NO. 366

NORTH AMERICA,

Joint Petitioner

and

UNITED BROTHERHOOD OF CARPENTERS AND
AMERICA, LOCAL UNION NO. 109

JOINERS OF

Joint Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,² the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

¹ The Employer's name appears as amended at the hearing.

² All parties submitted briefs, which have been duly considered.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of the Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Employer is a Mississippi corporation with a construction site located at the University of North Alabama, in Florence, Alabama, where it is engaged in the construction of a parking deck. The parties are in agreement that the appropriate unit should include all carpenters, carpenter helpers, and laborers employed by the Employer at its construction site at the University of North Alabama, in Florence, Alabama, but excluding all other employees, professional employees, office clerical employees, guards and supervisors as defined by the Act. Contrary to the Joint Petitioner, the Employer would exclude foremen as supervisors within the meaning of Section 2(11) of the Act. The parties stipulated that the job superintendent, assistant superintendent and field engineer are statutory supervisors and, therefore, excluded from any appropriate unit. Finding nothing to the contrary, they are excluded from the unit.

Since about April of this year, the Employer has been engaged in the construction of the parking deck on the campus of North Alabama University. The Employer utilizes a construction method referred to as the Perry system to erect the columns and walls and the GTS system to erect the tables or decks. All of the Employer's employees, at all levels, received the same training in the use of these systems. Although the dimensions of the walls and columns may vary, the sequencing of the tasks and the functions performed remain the same for both systems.

During the initial phase of the project, the Employer employed approximately five carpenters, among whom were Foremen Ken Flannigan and Jerry Baker. Flannigan and Baker worked as carpenters at another Employer site, prior to being transferred to the University of North Alabama site. Currently, there are approximately 30 carpenters employed at the instant site. Approximately half of the carpenters are journeymen, while the remaining are carpenter helpers. After about a month on the job, Flannigan and Baker were promoted from the carpenter position to foremen. They are the only foremen on the job. Job Superintendent Darryl Plier assigned Flannigan to serve as the foreman over the crew erecting the columns and walls, while Baker was assigned as foreman of the crew building the tables. The employees were divided between the two crews.

The foremen have not received any specialized training. The record evidence established that the foremen transfer employees between the crews according to the workflow. While the foremen do not wear their tools on the job, as do the other carpenters, on occasion they engage in the same work as the other unit employees. The record evidence did not establish the frequency with which the foremen work with their tools.

The foremen work the same schedule as the other carpenters, are paid hourly, eligible for overtime, and receive the same benefits as the other unit employees. Upon being promoted, the foremen were granted a 50 cents per hour raise. The foremen are subject to the same one-year probationary period for purposes of benefit eligibility, as are the other hourly employees. In contrast, the stipulated supervisory employees are salaried.

The Employer presented general testimony that the foremen have the authority to hire, fire, lay off, promote and discipline employees. The record, however, does not support a finding that the foremen have such authority. The job superintendent makes all hiring and employee pay rate decisions. While the Employer contends that the foremen effectively recommend hiring, the record established that unit employees have also effectively recommended employee hirings.

The job superintendent effectuated the only discharge from the job. It appears from the evidence presented that, with the possible exception of very minor matters, the foremen do not have the independent authority to resolve job-related concerns or employee grievances. Foremen cannot independently grant time off to employees. Instead, the foremen are required to bring such requests to the job superintendent for approval.

The foremen attended one management meeting, which was held less than one week after the instant petition was filed. All employees are required to attend weekly safety meetings at the site. At these meetings, Flannigan reads a statement prepared by the Employer's safety supervisor. Employees are then allowed to raise any questions or concerns related to the job. These questions or concerns can be addressed by anyone at the meeting.

It is well established that the party who asserts that an individual possesses supervisory status bears the burden of demonstrating the actual exercise of supervisory authority by the individual in question. *Bennett Industries*, 313 NLRB 1363 (1994); *Ohio Masonic Home, Inc.*, 295 NLRB 390, 393 (1989); *Soil*

Engineering & Exploration Co., 269 NLRB 55 (1984). An individual is a supervisor if he or she possesses authority in any one of the areas set forth in the statute. Accordingly, any individual having authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, responsibly direct employees, adjust grievances, or effectively recommend such actions is a supervisor under Section 2(11) of the Act. However, such authority must be exercised with independent judgment and not merely in a routine or clerical manner. *Clark Machine Corp.*, 308 NLRB 555 (1992); *Juniper Industries*, 311 NLRB 109 (1993). Applying the above principles, the undersigned finds that the Employer failed to establish that the foremen possess supervisory authority as defined in the Act. The record contains no evidence that the disputed employees have the independent authority to hire, fire, discipline, grant leave or adjust employee grievances.

Although the evidence established that the foremen determine crew assignments of unit employees, the foremen's decisions to direct or move employees are controlled by the workflow and production needs. Such movement of personnel to meet production requirements is simply "a function of routine work judgment and not a function of authority to use the type of independent judgment required of a statutory supervisor." *J.C. Brock Corp.*, 314 NLRB 157 (1994). See also, *North Jersey Newspapers Co.*, 322 NLRB 394 (1996); *S.S. Joachim and Anne Residence*, 314 NLRB 1191, 1194 (1994). Similarly, any directions or assignments issued by the foremen are by virtue of higher skills, training, and experience. Moreover, the evidence established that the job superintendent regularly inspects the work to ensure satisfactory performance. Thus, such assignments or directions issued by the foremen do not rise to the level necessary to establish supervisory status. See *Providence Hospital* 320 NLRB 717 (1996).

The record evidence failed to establish with any degree of certainty that the foremen have ever disciplined or effectively recommended discipline. Accordingly, there is no basis for finding supervisory status based upon the evidence presented. See *Blue Star Ready-Mix Concrete Corp.*, 305 NLRB 429 (1991). The simple act of reporting employee infractions, without more, does not confer Section 2(11) supervisory authority. *Rest Haven Living Center, Inc.*, 322 NLRB 210 (1996). Likewise, simply attending meetings with management does not indicate supervisory status. *J.C. Brock Corp.* at 160.

Based on the foregoing, and the record as a whole, the Employer has failed to present sufficient evidence to establish that the foremen possess supervisory authority within the meaning of Section 2(11) of the Act. Accordingly, I shall include the foremen in the unit found appropriate herein.

On the record as a whole, I find that the following employees constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All carpenters, carpenter helpers, laborers, and foremen employed by the Employer at its construction site at the University of North Alabama in Florence, Alabama, but excluding all other employees, including job superintendent, assistant superintendent, and field engineers, professional employees, office clerical employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by the Laborer's International Union of North America, Local Union No. 366 and the United Brotherhood of Carpenters and Joiners of America, Local Union No. 109.

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); N.L.R.B. v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. North Macon Health Care Facility, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in the NLRB Region 10, Birmingham Resident Office, Ridge Park Place, 1130 South 22nd Street, Suite 3400, Birmingham, Alabama 35205-2870, on or before September 29, 2000. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, DC, 20570.

This request must be received by the Board in Washington by October 6, 2000.

DATED this 22nd day of September, 2000, at Atlanta, Georgia.

/s/ Martin M. Arlook
Martin M. Arlook, Regional Director
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